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08/219,179 03/28/94 HESS

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LACYK, J EXAMINER

33M1/0615

ART UNIT PAPER NUMBER

JAMES W. PETERSON  
BURNS, DOANE, SWECKER & MATHIS  
P.O. BOX 1404  
ALEXANDRIA, VA 22313-1404

3305

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DATE MAILED: 06/15/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on 3/28/94  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice of Draftsman's Patent Drawing Review, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION

1.  Claims 13-17 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2.  Claims 1-12 have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims 13-17 are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.

7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable;  not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been  approved by the examiner;  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed \_\_\_\_\_, has been  approved;  disapproved (see explanation).

12.  Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14.  Other

EXAMINER'S ACTION

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1. Claims 13-17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13, line 9, the use of "positionable" is indefinite in that it is unclear if the device is positioned by the balloon or not. In claim 16 "the wirewound housing" lacks positive antecedent basis. Claims 13, 15, 17 recite a radioactive means buts fails to further define any functional language associated with the means language. The claims should be amended to include proper means plus function language.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 15 is rejected under 35 U.S.C. § 102(b) as being anticipated by Lemelson.

Lemelson discloses a radioactive dose means that has a positioning means for advancing and withdrawing the dose means. The device also has a retractable sheath that is removed to expose the dose means to the treatment area.

4. Claims 13-14 and 17 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

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5. Claim 16 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is (703) 308-2995.

  
LEE S. COHEN  
PRIMARY EXAMINER  
ART UNIT 335

  
J.P. Lacyk  
June 15, 1994